STATE OF MICHIGAN

COURT OF APPEALS

SAUNDRA HAAS, Individually and as Personal Representative of the Estate of ARTHUR HAAS, Deceased,

Plaintiffs-Appellants/Cross-Appellees,

v

JEFFREY DUANE BRIGGS and JERRY DUANE BRIGGS,

Defendants-Appellees/Cross-Appellants,

and

JOANN BRIGGS,

Defendant.

UNPUBLISHED
September 3, 2002

No. 224753
Eaton Circuit Court
LC No. 97-000387-NI

SAUNDRA HAAS, Individually and as Personal Representative of the Estate of ARTHUR HAAS, Deceased,

Plaintiffs-Appellees,

v

JEFFREY DUANE BRIGGS and JERRY DUANE BRIGGS,

Defendants-Appellants,

and

JOANN BRIGGS,

Defendant.

No. 227758, 227772
Eaton Circuit Court
LC No. 97-000387-NI

SAUNDRA HAAS,

Plaintiff-Appellant,

v

No. 228511
Eaton Circuit Court
LC No. 99-000867-CK

KIMBERLY HAAS, Personal Representative of the Estate of ARTHUR HAAS, Deceased,

Defendant-Appellee.

Before: Hood, P.J., and Holbrook, Jr. and Owens, JJ.

PER CURIAM.

This case arises out of a vehicle-pedestrian accident that resulted in Arthur Haas' death. Arthur Haas was the pedestrian, and defendant Jeffrey Duane Briggs drove the vehicle. Defendant Jerry Duane Briggs owned the vehicle. Plaintiff Saundra Haas, individually, and on behalf of Arthur Haas' estate, filed a lawsuit claiming that defendants' negligence caused Arthur Haas' death. Defendants claimed that Arthur Haas was at fault for his own death. The jury found that Arthur Haas was fifty-four percent at fault for the accident and that the estate's damages were $556,555. The jury also awarded plaintiff Saundra Haas $129,260 on her individual claim of negligent infliction of emotional distress.

In docket no. 224753, the parties appeal as of right from the trial court's orders partially granting defendants' motions for remittitur. In docket nos. 227758 and 227772, defendants appeal as of right from several lower court rulings involving plaintiff Saundra Haas' request for mediation sanctions. In docket no. 228511, which involves a separate lawsuit, plaintiff Saundra Haas appeals as of right from trial court orders denying her motion for summary disposition and granting the estate's motion for summary disposition. We affirm.

Docket No. 224753

As noted above, the jury found Arthur Haas to be fifty-four percent at fault for the accident. Accordingly, the trial court properly reduced the estate's damages by fifty-four percent. Defendants moved for remittitur, contending that the evidence only supported damages of $351,310.98. The trial court denied defendants' motion for remittitur, ruling that the jury could have considered inflation when determining the estate's economic losses.

A trial court may grant a motion for remittitur "if the jury verdict is 'excessive,' that is, greater than the highest amount that the evidence will support. MCR 2.611(E)(1)." *Craig v Oakwood Hosp*, 249 Mich App 534, 539; 643 NW2d 580 (2002). A trial court's decision on a

motion for remittitur is reviewed for an abuse of discretion.[1] *Id.* On appeal, defendants contend that the trial court abused its discretion by denying their motion for remittitur as to the estate's damages.

Here, it is undisputed that the estate incurred $5,196.38 in travel and funeral expenses. It is also undisputed that the estate suffered an economic loss based on the reduction in Arthur Haas' pension benefits following his death. Plaintiff Saundra Haas testified regarding both the "gross" and "net" pension benefit reduction. Thus, the jury could have based its verdict on either the "gross" or the "net" monthly reduction, calculated over the stipulated-to time period of 20.6 years. To the extent that the jury based its verdict on the "gross" monthly pension reduction, the evidence supported $412,727.59 in damages. Therefore, added to the travel and funeral expenses, the evidence certainly supported $417,923.97 in damages.

Nevertheless, the jury awarded the estate $556,555 in damages. The estate contends that the jury could have granted its request for loss of services calculated at $25 per day. However, we agree with defendants' contention that no evidence was introduced to support a damages award based on loss of services. As such, an award for loss of services would have been excessive. *Craig, supra* at 539.

The estate also contends, and the trial court concurred, that the jury could have granted its request to consider inflation. In fact, we note that, not only did the estate request that the jury consider inflation, but that the trial court instructed the jury that it could consider inflation when determining damages. Moreover, our Supreme Court has recognized that a plaintiff is not required to introduce evidence on inflation because it "is a fact known to every juror without expert testimony." *Kovacs v Chesapeake & O R Co*, 426 Mich 647, 651; 397 NW2d 169 (1986). In regard to the pension, no evidence was introduced establishing whether the monthly pension benefits were fixed or adjusted for inflation. Thus, it is not clear that the jury could not consider inflation when determining the estate's economic loss. To the contrary, the jury was instructed by the trial court that it could consider inflation, and the estate requested that it do so. Consequently, we cannot conclude that the trial court abused its discretion to the extent that it denied defendants' motion for remittitur. *Craig, supra* at 539.

The trial court partially granted defendants' motion for remittitur, reducing plaintiff Saundra Haas' individual damages award by the fifty-four percent fault attributable to Arthur Haas. On appeal, plaintiff Saundra Haas challenges this ruling.

MCL 600.2957 provides in pertinent part:

> (1) In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the liability of each person shall be allocated under this section by the trier of fact and, subject to section 6304, in direct proportion to the person's percentage of fault. In assessing percentages of fault under this subsection, the trier of fact shall consider the fault of each person,

[1] "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

> regardless of whether the person is, or could have been, named as a party to the action.

Similarly, MCL 600.6304(4) provides that "a person shall not be required to pay damages in an amount greater than his or her percentage of fault . . . ."

Here, the jury plainly found that defendants were only forty-six percent at fault for causing the accident that led to Arthur Haas' death. Therefore, with respect to plaintiff Saundra Haas' claim of negligent infliction of emotional distress, which was based on her witnessing Arthur Haas' injuries, defendants' percentage of fault could, logically, be no more than forty-six percent. Accordingly, defendants could be liable for only forty-six percent of plaintiff Saundra Haas' damages. MCL 600.2957(1); MCL 600.6304(4).

Plaintiff Saundra Haas cites several reasons in support of her contention that the trial court abused its discretion by reducing her damages award. She contends that defendants failed to raise the issue of Arthur Haas' negligence as an affirmative defense to her claim. Our review of defendants' pleadings reveals, however, that defendants alleged that "the sole, proximate, or contributing cause of the alleged collision was the negligence of the decedent plaintiff . . . ." Defendants did not state that this defense specifically applied to either plaintiff Saundra Haas' claim or the estate's claims. Instead, the defense was pleaded so that it applied to both claims. As such, we reject plaintiff Saundra Haas' suggestion that the defense was not pleaded in regard to her individual claim. As a result, this argument is without merit.[2]

Plaintiff Saundra Haas further contends that her damages award should not have been reduced because defendants failed to comply with MCR 2.112(K). MCR 2.112(K) requires that a party provide notice that it intends to prove that a nonparty was wholly or partially at fault. The trial court rejected this argument, finding that there could have been no surprise because the defendants' pleadings referenced Arthur Haas' fault, and that, therefore, the spirit of the court rule had been satisfied. We agree. As noted above, defendants' pleadings plainly indicated that they were contending that Arthur Haas' fault partially or wholly contributed to plaintiffs' damages. Moreover, because the same attorney represented both plaintiff Saundra Haas and the estate, her counsel was undoubtedly aware that defendants were contending that Arthur Haas was at fault for the accident. Consequently, we find no error.

Finally, plaintiff Saundra Haas contends that the trial court erred because defendants did not request a corresponding jury instruction. Initially, we note that defendants did request several jury instructions relating to Arthur Haas' fault in causing the accident. Regardless, where, as here, statutory provisions plainly set forth a limit on defendants' damages, we believe that the trial court was well within its discretion to grant defendants' motion for remittitur as a matter of law. Consequently, we conclude that the trial court did not abuse its discretion in granting defendants' motion for remittitur in regard to plaintiff Saundra Haas' damages award. *Craig, supra* at 539.

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[2] We further note that plaintiff Saundra Haas' reliance on *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (1999), is misplaced because each of defendants' pleadings raised the same defenses.

Defendants also appeal as of right from several post-trial orders relating to plaintiff Saundra Haas' request for mediation sanctions. The trial court granted her request for mediation sanctions, and awarded her attorney fees calculated at $210 per hour.

Defendants contend that the trial court erred by allowing plaintiff Saundra Haas to file an untimely request for mediation sanctions. MCR 2.403(O)(8) states: "A request for costs under this subrule must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion for a new trial or to set aside the judgment." The trial court found that plaintiff Saundra Haas' request for mediation sanctions was timely because it was filed within twenty-eight days of its order denying her motion for reconsideration. The trial court opined that MCR 2.403(O)(8) contemplated a motion for reconsideration, even though it did not specifically list that as a motion that would toll the time to request sanctions. Alternatively, the trial court noted that it had not entered a final judgment yet; therefore, her mediation sanctions request could not yet be untimely.

We review de novo a trial court's decision to grant mediation sanctions. *Braun v York Properties, Inc*, 230 Mich App 138, 149; 583 NW2d 503 (1998). In *Braun*, we explained:

> In unambiguous terms, MCR 2.403(O)(8) provides that the period for requesting costs begins on the date the court enters judgment or the date the court enters an order denying a timely motion for a new trial or to set aside the judgment. For purposes of the court rule, the *judgment* is the judgment adjudicating the rights and liabilities of the particular parties, regardless of whether the judgment is the final judgment from which the parties may appeal. See MCR 2.604(A). The court rule includes a provision allowing twenty-eight days after the order disposing of a motion for a new trial or to set aside the judgment in which to request sanctions because these motions may affect whether a party is entitled to the sanctions. When these motions do not pertain to the parties involved in the request for sanctions, extending the period for filing a motion for sanctions would serve no purpose. [*Id.* at 150.]

Here, plaintiff Saundra Haas' entitlement to mediation sanctions did not, ultimately, become final as to the parties until the trial court denied defendants' motion for relief from judgment. Indeed, it was this motion that rejected defendants' contention that plaintiff Saundra Haas' damages award should be reduced to present cash value, notwithstanding her earlier stipulation to the contrary. Moreover, plaintiff Saundra Haas' motion for reconsideration was tantamount to a motion to set aside the judgment. We agree with the trial court's determination that the spirit of the court rule was not violated; indeed, to deny plaintiff Saundra Haas' request for mediation sanctions because her motion was improvidently titled would be putting form over substance. Accordingly, we do not believe that the trial court erred by rejecting defendants' challenge to the timeliness of her mediation sanctions request.

Defendants also contend that the trial court erroneously awarded plaintiff Saundra Haas mediation sanctions because she stipulated to a reduction of her damages to present cash value,

which prevented her from receiving a "more favorable" verdict. See MCR 2.403(O)(1). This issue was raised in defendants' motion for relief from judgment. A trial court's denial of a party's motion for relief from judgment is reviewed for an abuse of discretion. *Redding v Redding*, 214 Mich App 639, 643; 543 NW2d 75 (1995).

Here, the parties agree that the mediation evaluation for plaintiff Saundra Haas' claim was $50,000. Both parties rejected the mediation evaluation. MCR 2.403(O)(1) states that a party rejecting a mediation evaluation must pay the other party's actual costs if the other party receives a verdict "that is more favorable to that party than the evaluation." Thus, even though plaintiff Saundra Haas rejected the evaluation, she was entitled to recover actual costs from defendants if the verdict was "more favorable" than the evaluation. MCR 2.403(O)(3) states that a verdict is more favorable to the plaintiff if it is "more than 10 percent above the evaluation." Therefore, plaintiff Saundra Haas' was entitled to mediation sanctions if her verdict was more than $55,000.

The record reveals that plaintiff Saundra Haas stipulated to a reduction of her damages award to present cash value; however, before a final judgment was entered, she turned sixty years of age. Regardless of her stipulation, MCL 600.6306(1)(c), (d), and (e) provide that a trial court must enter a judgment reducing all future damages to gross present cash value. On the other hand, MCL 600.6311 provides in pertinent part that MCL 600.6306(1)(c), (d), and (e) "do not apply to a plaintiff who is 60 years of age or older at the time of judgment." Thus, read together, where a verdict includes future damages, the future damages must be reduced to gross present cash value, MCL 600.6306(1), unless the plaintiff is sixty years of age or older, MCL 600.6311.

Thus, the issue is essentially whether plaintiff Saundra Haas' stipulation should control over the statutory provisions, or vice-versa. In resolving this issue, the trial court ruled that the statutory provisions prevailed over the stipulation. In *Staff v Johnson*, 242 Mich App 521, 535; 619 NW2d 57 (2000), we explained that "[s]tipulations of fact are binding, but stipulations of law are not binding." Here, we believe that the reduction of a jury's damage award to present cash value is a matter of law because of the aforementioned statutory provisions. Accordingly, to the extent that plaintiff Saundra Haas stipulated to a matter covered by statute, it was not binding.[3] Consequently, the trial court did not abuse its discretion by denying defendants' motion for relief from judgment.[4]

Defendants also contend that plaintiff Saundra Haas should be equitably estopped from challenging her stipulation to reduce damages to present cash value where she argued to the jury that it should consider inflation because the trial court had to reduce the damages award to

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[3] Alternatively, we note that MCR 2.403(O)(3) requires a verdict to be adjusted by costs and interest, as well as future damages reductions to present cash value pursuant to MCL 600.6306. The statute does not say that a verdict must be adjusted where, as here, the future damages award is reduced pursuant to a stipulation. Accordingly, even if her stipulation prevailed, the stipulation did not necessarily prevent her from being entitled to mediation sanctions.

[4] We may affirm where the trial court reaches the right result, but for the wrong reason. *People v Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993).

present cash value. Generally, we review de novo a trial court's application of the doctrine of equitable estoppel. *West American Ins Co v Meridian Mut Ins Co*, 230 Mich App 305, 309; 583 NW2d 548 (1998). "Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts." *Id.* at 310. Here, defendants have not argued how they justifiably relied or acted based on the argument to the jury. Accordingly, we are not persuaded that the trial court erred by declining to find that plaintiff Saundra Haas was equitably estopped from challenging the reduction to present cash value.

Defendants also challenge the trial court's selection of $210 as a reasonable hourly rate. According to MCR 2.403(O)(6)(b), actual costs, for purposes of mediation sanctions, include "a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation." A trial court's conclusion regarding a reasonable hourly rate for attorney fees awarded as part of a party's actual costs, MCR 2.403(O)(6), is reviewed for an abuse of discretion. See *Temple v Kelel Distributing Co*, 183 Mich App 326, 330; 454 NW2d 610 (1990).

The following factors are to be considered by the trial court in computing a reasonable attorney fee: "(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client." *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982), quoting *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973). In *Temple*, we remanded with instructions for the trial court to consider the above factors, as well as "the empirical data contained in the Law Practice Survey as well as data contained in other reliable studies or surveys." *Temple, supra* at 333.

Here, defendants contend that the trial court should not have relied on an affidavit opining that a reasonable hourly rate was $250 because the attorney attesting to that opinion did not sign the affidavit. However, the record does not indicate that defendants raised this issue below. Accordingly, it is forfeited for appellate review. See *Candelaria v BC General Contractors, Inc*, 236 Mich App 67, 83; 600 NW2d 348 (1999). Moreover, defendants have cited no authority in support of their assertion that the trial court could not rely on this affidavit. It is well established that we will not search for authority to support a party's position where that party fails to cite any authority supporting its claim. *Chapdelaine v Sochocki*, 247 Mich App 167, 174; 635 NW2d 339 (2001).

Regardless, we note that the trial court was in the best position to determine several of the *Wood* factors, such as the "professional standing and experience of the attorney"; "the skill, time and labor involved"; "the amount in question and the results achieved"; and "the difficulty of the case." *Wood, supra* at 588. This case involved several trial days, numerous expert witnesses, and substantial post-trial litigation. Moreover, the matter was not just a personal injury action, but a wrongful death action. In addition, from an evidentiary standpoint, plaintiffs' counsel was able to limit Arthur Haas' fault to fifty-four percent, even though the two surviving witnesses each testified that he appeared to move quickly into the road. Thus, even though the somewhat outdated State Bar survey may have suggested a lower hourly rate, having reviewed all of the

relevant factors, we do not believe that the trial court abused its discretion in finding $210 to be a reasonable hourly rate.

Docket No. 228511

Having had her damages reduced by the fifty-four percent fault attributable to Arthur Haas, plaintiff Saundra Haas filed a lawsuit against the estate seeking the lost damages. The estate retained new counsel, and Kimberly Haas served as the personal representative of the estate. Plaintiff Saundra Haas moved for summary disposition, contending that the issue of Arthur Haas' fault could not be re-litigated based on the doctrine of res judicata. The trial court denied her motion, and later granted the estate's motion for summary disposition pursuant to MCR 2.116(C)(8). Plaintiff Saundra Haas appeals as of right.

Generally, a trial court's ruling on a motion for summary disposition is reviewed de novo. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). In regard to a motion for summary disposition pursuant to MCR 2.116(C)(8), the *Beaudrie* Court opined:

> A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery. [*Id.* at 129-130.]

"All well-pleaded facts are accepted as true and are construed in the light most favorable to the nonmoving party." *Madejski v Kotmar Ltd*, 246 Mich App 441, 444; 633 NW2d 429 (2001).

In *Minicuci v Scientific Data Mgmt, Inc*, 243 Mich App 28, 33; 620 NW2d 657 (2000), we recognized that the preclusion doctrines—res judicata and collateral estoppel—serve an important function in resolving disputes by:

> [I]mposing a state of finality to litigation where the same parties have previously had a full and fair opportunity to adjudicate their claims. By putting an end to litigation, the preclusion doctrines eliminate costly repetition, conserve judicial resources, and ease fears of prolonged litigation. Whether the determination is made by an agency or court is inapposite; the interest in avoiding costly and repetitive litigation, as well as preserving judicial resources, still remains.

Ordinarily, res judicata bars a subsequent relitigation that is based on the same transaction or events as earlier litigation. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). Here, the accident that caused Arthur Haas' death was the same transaction or event that led to both lawsuits. Thus, the doctrine of res judicata barred plaintiff Saundra Haas from bringing the second suit. Consequently, the trial court did not err by either denying her motion for summary disposition or granting the estate's motion for summary disposition. *Beaudrie*, *supra* at 129-130.

Affirmed.

/s/ Harold Hood
/s/ Donald E. Holbrook, Jr.
/s/ Donald S. Owens